

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
September 13, 2005**

Place: Room 206
Town Hall

TIME: 8:00 PM

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Bigelow, Forman, Spain, Conze, Kenny

STAFF ATTENDING: Ginsberg, Keating
COURT RECORDER: Beler

PUBLIC HEARING

Continuation of Public Hearing regarding Resubdivision Application #433-A, Coastal Site Plan Review #213, The Frances B. Dorrance Trust, 20 Juniper Road. Proposing to remove the existing tennis court, divide the existing property into two lots and open space, and perform related site development activities within a regulated area. The subject property is on the northeast side of Juniper Road, approximately 1,100 feet east of its intersection with Nearwater Lane, and is shown on Assessor's Map #57, as Lot #12, in the R-1 Zone.

Mr. Steven McAllister of Holt McChord Engineering Associates Inc. presented the application. He referred to the revised plan entitled "Subdivision Development Plan" and last revised 8-30-05, which shows an "existing 7 Bedroom Residence" on the existing "island" property (shown on the plan as Parcel 2B). They also show a final septic system reserve area to be revised to accommodate this existing residence, if necessary. Mr. Matt Popp, a professional wetland scientist of Environmental Land Solutions, LLC, then reviewed the CAM report with the Commission. He explained that the subject property is 10+ acres in size and will be divided into two lots. As part of this proposal there is no impact on the existing natural resources. The proposed residence has been sited to avoid impact to the meadow behind the existing tennis court. He noted that they could plant an evergreen grove near the shore to improve the wildlife habitat. All proposed activity is proposed away from the sensitive areas near the water.

Mr. McAllister explained that there is now public water service to the existing house on the island. He believed that it is feasible to drill a new well to save the existing wetlands and divert the existing water line to serve the new proposed residence. Mr. Ginsberg specifically noted the need to remove the tennis court prior to filing the subdivision map in the Darien Land Records. He added that construction of the new residence on the proposed lot might be subject to another application before the Planning & Zoning Commission depending on exactly what is proposed and where it is proposed on the property.

Attorney Robert F. Maslan, Jr. of Maslan Brown Associates was present representing Mr. & Mrs. Collins, the adjacent neighbors to the west. He then introduced Don Ferlow, landscape architect of Stearns & Wheler. Mr. Ferlow explained that if the house is built in the location as shown on the plans that is satisfactory, however if the purchaser of the lot chooses to build in a different location,

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
SEPTEMBER 13, 2005
PAGE 2.

then the possible impact to the coastline may be different. Mr. Ferlow mentioned that the depth of the groundwater to the stormwater galleries needs to be analyzed. Also the feasibility of installing a well (avoiding salt water intrusion) should be determined/implemented prior to the start of construction of the residence on the new lot. This is because if it does not work, then switching the water line to the new lot will leave the existing residence without access to water. He suggested putting a "buildable envelope" on the new lot to avoid intrusion into the sensitive areas. Mr. Ferlow mentioned that right-of-way for access to the waterfront already exists and that they should limit future disturbance to avoid more impacts for another access area to the owner of the vacant parcel.

Attorney Maslan then said that there is the potential to avoid a future coastal area management (CAM) review for the proposed residence unless it is specifically conditioned as part of the Planning & Zoning Commission subdivision approval. He said that this is a unique and sensitive environmental site and deserves conditions and protections/limitations. Mr. Maslan suggested that the applicant could explore installing the septic system higher into the flood zone and further away from the coastal area (to the west end of the vacant lot). Mr. Maslan also noted that the footpaths on the property have been there since the 1960s. Mr. McAllister responded that the vacant lot is almost entire below Flood Elevation 12 (the flood elevation) and therefore nearly the entire vacant property is within the flood zone.

Mr. Anthony Lazzara of 18 Juniper Road said that he lives across the street from the subject property. He had heard that Sam Dorrance brought water to the house on the island at great expense because he could not get a well out on the island. Mr. Lazzara confirmed that the existing footpaths have been on the property since he moved to the area 10 years ago. He agreed that this is very sensitive land and that great caution should be used by the Planning & Zoning Commission. Attorney Michael Nedder said that the subject application is a feasibility study only, that there are many more options for development of the vacant property. He said that the footpaths are currently family used and that the neighbors have not purchased rights to use the paths on this site, just because they bought other lots from family members. He is not agreeable with the concept of a buildable envelope and that there are currently no plans to develop the site at this time or per these conceptual plans. Mr. Lazzara then responded that this does not sound like a real plan.

Attorney Wilder Gleason of Gleason & Associates was present and said that he represents the buyer of the existing house on the "island" property. He believed that the application should move forward and that the proposal for two lots on 10 acres will preserve much of the land on the property.

There being no other comments from Commission members or the general public, Mr. Conze made a motion to close the public hearing on this matter. That motion was seconded by Ms. Forman and unanimously approved.

At 8:45 P.M., Mr. Damanti read the next agenda item:

Continuation of Public Hearing regarding Subdivision Application #164-A, Nancy Hyland, 40 Noroton Avenue. Proposing to subdivide the existing properties into four building lots with associated open space and perform related site development activities. The subject properties are located on the east side of Noroton Avenue approximately 110 feet north of its intersection with Clock Avenue and are shown on Tax Assessor's Map #42 as Lots #151 and #152, in an R-1/3 Zone.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
SEPTEMBER 13, 2005
PAGE 3.

Mr. Bigelow said that he is a neighbor to the subject property and recused himself from this application and left the meeting room. Mr. Ginsberg then distributed copies of various e-mails and correspondence received over the past weeks regarding this application. Attorney Arthur Engle of Rucci Burnham Carta Carello & Reilly was present to discuss the application. He noted that many concerns have been expressed by the neighbors, however there is support from some neighbors and he then submitted some letters of support from various neighbors near the subject property. He has spoken a number of times with neighbors and their representatives regarding their concerns with the application. He said that the applicants went to the Zoning Board of Appeals and obtained a variance to preserve the existing front house. Mr. Engle said that the applicant had shown a proposed 15 foot wide conservation easement along the south property line to preserve existing vegetation. He noted that draft easement language was submitted for the record. This easement will also allow more plants to be installed. The easement will be enforceable by the Town and the planting plan that they have submitted will supplement and fill in the existing gaps around the subject property.

Mr. Don Ferlow of Stearns and Wheler submitted his curriculum vitae noting that he is a landscape architect. He said that he visited the site some months ago and he displayed photographs of the subject property. He then mentioned that the existing forsythia plant is suffering from a lack of water. Mr. Ferlow then referred to the plan prepared by Stearns & Wheler entitled "Conservation Easement Planting" noting the existing and proposed plants. He explained that there is a great variety of existing plants around the perimeter and if one tries to plant under the Norway maples, it will need to be tolerant of a very dense shade. On the east side of the property, they propose a 6 foot tall fence with plants on the neighbors' side of the property so the plants could climb up the fence. Mr. Ferlow then drew on the Conservation Easement Planting Plan and dated it 13 Sept 05. He noted on that Plan, that there is a gap in the southeast corner to be filled in with forsythia. On the south side of the property they propose to fill in gaps by planting spruce trees and transplanting a magnolia. Mr. Engle mentioned that the neighbor to the south does not want the magnolia plant and that the Rices of 11 Clock Avenue would prefer 14 foot tall trees which is too big a root fall and too heavy. Mr. Ferlow continued that along the north property line they will need to take down a large maple tree for regrading with the proposed street. They will replace it with a red oak and put in border plants such as cornelian cherry, inkberry, dogwood, Callery Pear Tree and kerria.

Attorney Engle then said the proposed easements along the south property line are in favor of Rice and Bigelow on Clock Avenue to allow them to maintain the plants within the conservation easement area. He noted that the maple tree on the north side of the subject property is already stressed and cabled, and it needs to be removed. The existing beech tree on the north side of the property will be preserved and will not be impacted by the road construction.

Arborist Richard Whitehead then submitted his curriculum vitae. He then submitted three letters regarding trees on the subject property. He noted that the beech tree can be preserved and will be a focal point of the subdivision. He also submitted guidelines for preserving trees and saving the critical root zones. Mr. Engle noted that he has recently received an e-mail from Captain Pavia of the Darien Police Department noting that there is no safety issue with the proposed road location on the property. Mr. Engle said that the Darien Subdivision Regulations specifically note that one should not design streets within 150 feet of each other. He then noted that there are many examples of where such streets exist in Town. Another provision of the Subdivision Regulations refers to a

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
SEPTEMBER 13, 2005
PAGE 4.

500 foot separation for streets on the same side of the street. Mr. Engle noted that Article VII-A of the Subdivision Regulations allows for a waiver of the separation requirements. He said that alternate subdivision plans could be built but that would require removal of the existing residence in the front of the property. Their proposed plan would preserve the house and implement various conservation easements as shown. In summary, Mr. Engle noted that they have worked hard over the past two months on modifications to the subdivision. They have moved the proposed road slightly to the south, they have focused on tree preservation, granting easements to various neighbors, and preparing a planting plan. He asked that the applicants be allowed to sell the front house first before working on the subdivision and not requiring Ms. Hyland, the current property owner to do the work, but rather requiring the builders/developers do the required work for the subdivision.

Attorney Jane Freeman of Cacace Tusch and Santagana was present representing the Bigelows of 9 Clock Avenue. She said that the proposed 15 foot wide easements along the south property line are only proposed at this time, and that the final language is subject to final review and action by the Planning and Zoning Director and Town Counsel. She requested that the Commission continue the public hearing on this matter to allow additional time to coordinate the various easement documents and for Town Counsel to review them. She said that if the magnolia is not transplanted, she requested that there be two more blue spruces in that 30 foot space (i.e. 2 #10s). Mr. Rucci and Mr. Ferlow acknowledged that they could add those blue spruces. Ms. Freeman then mentioned a list of additional conditions including the following: all landscaping be installed prior to a Building Permit; that the open space and/or conservation easements be marked; that there be a landscaping bond in effect for two years; that any rodents be killed prior to the demolition of the bond to avoid relocation of rodents.

Ms. Josephina Rice of 11 Clock Avenue then showed a map to the Commission with models and props. She said that although the plans were improved, it took 52 days since the last public hearing until the receipt of the landscape plan. She believed the landscape plan is still woefully short to provide necessary screening. She said that she is looking to have large spruce evergreen trees within the easement area but not in the proposed use area.

Ms. Danielle Leinroth of 46 Noroton Avenue then spoke. She said that there is a lack of consistency, clarity and cooperation from the applicant. She claimed that the submitted environmental planting plan (the Conservation Easement Planting Plan) is a "smoke screen" and that the trees proposed to be planted are only \$1,300.00 +/- wholesale, which is less than a dollar per foot of property. She said that the homeowners of the proposed lots would be responsible for these environmental planting areas. She said that the open space purported to be owned by one homeowner on Lot #2 would be used as basically an extension of their yard. She then submitted a five-page series of sketches and drawings. Exhibit I shows the road moved two to five feet south. Ms. Leinroth said that the applicant's proposed road is contrary to their arborist's recommendations who said that no road should go under the canopy of the beech tree. She then referred to her Exhibit III which shows that by splitting the open space, one could preserve the beech tree by moving the street further to the south. Ms. Leinroth said that her Exhibit IV showed better lot lines with the houses separated. She said the sizes of trees are misrepresented on the applicant's plans and shown at sizes at differing ages. She suggested that the applicant preserve the beech tree, make the open space more public, and separate the proposed large trees.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
SEPTEMBER 13, 2005
PAGE 5.

Mr. Phil Rosztoczy of 7 Clock Avenue said that he was present on behalf of 9 neighbors of the proposed subdivision including three neighbors on Clock Avenue, three neighbors on Dickinson Road, and three neighbors on Noroton Avenue. He said that he spoke with Mr. Engle on or about August 13, 2005 and requested a meeting with him. He was never given a response to that request. He then read aloud his "Comments on the Proposed Subdivision of 40 Noroton Avenue". He believed that the application is not in compliance with the Darien Zoning Regulations. He said that the property was bought in 1958 and has since been used as one merged lot. He said that the subdivision is in clear violation of Sections 300 and 400 of the Darien Zoning Regulations and claimed that since construction of a street or road is not a permitted use, the Planning and Zoning Commission cannot approve it. He noted that the proposed subdivision is within 200 feet of Clock Avenue and any new roads should be at least 500 feet apart. He specifically referred the Commission to Article IV-E-7 and IV-E-9 of the Subdivision Regulations which state that there should be 150 foot minimum separation by off-setting roads which is not met here due to Casement Street across the street. He said that the character of the neighborhood would be irrevocably impacted by this subdivision. Mr. Rosztoczy then said that the subdivision is a major safety hazard and that even the Traffic Report submitted by the consultant hired by the applicant says that sight lines are not ideal. He noted that crossing guards are now needed at Clock Avenue due to safety concerns. He referred to an existing speed limit of 25 miles per hour on Noroton Avenue and that typically cars travel much faster than that. She said that there are about 9 to 12 properties that back up to this subject property and that given the R-1/3 zoning this subject property prevents overcrowding in a limited space. He said that many people in the area have bought their properties within the past few years and that he estimated that a reduction in property values would result as part of this subdivision. He believed that the subdivision would provide no benefit to the Town or to the neighborhood. Mr. Rosztoczy then submitted a copy of this statement and the signatures of 9 neighbors.

Ms. Virginia Otis of 17 Dickinson Road then claimed that only those neighbors with attorneys got responses from the applicant's attorney, Mr. Engle. She said that as a result of the most recent conservation easement planting plan, the neighbors to the east got a few forsythia while Mrs. Leinroth to the north got many more plantings. She then read aloud from her letter of September 12th and said that in her opinion the current plan is unacceptable. She had suggestions for new plantings and requiring of bonding the plantings. She strongly recommended the easements be demarcated and had questions about the open space use and its enforcement. She said that the 6 foot high tall fence proposed this evening by Mr. Ferlow is not acceptable to her. She then read aloud another letter objecting to the large houses on the small lots and she would like more time to suggest alternatives. Attorney Joseph Rucci of Rucci Burnham Carta Carello and Reilly said that the applicant has had enough discussions with the neighbors and they would like very much to close the public hearing tonight.

Ms. Donna Sheehan of 41 Noroton Avenue said that she was not contacted by the applicant about this subdivision. Her primary concern is safety. She noted that the Traffic Report says that the sight lines are not ideal but acceptable. She said traffic was studied in an off-peak time not during the school year. She said that the subdivision may be acceptable to someone who does not live on Noroton Avenue. She believes that construction of the subdivision will be two plus or minus years long with large vehicles going in and out of the street. In conclusion she stated that she is strongly opposed to the subdivision.

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
SEPTEMBER 13, 2005
PAGE 6.

Ms. Laura DiMeglio of 15 Dickinson Road said that she could not speak at the last public hearing in July. She had concern about landscaping, drainage, and the size of the houses. Her husband, Jerry DiMeglio said that it is the Planning and Zoning Commission's responsibility to protect both the neighborhood and the Town.

Mr. Michael Durbin of 35 Noroton Avenue said that the off-setting streets need separation and the construction of the proposed street will create safety concerns. He said that while there might be other examples of streets close together like this throughout the community, no such cross streets are likely as busy as Noroton Avenue.

Attorney Wilder Gleason of Gleason & Associates, LLC was present representing Mr. & Mrs. Rice of Clock Avenue. He said that the applicant has provided information in September rather than in early August. He said that although they have made some progress, they are not where they want to be. He believed that the Rices will have headlights shining into their master bedroom from the proposed road and the driveway on Lot #2. He asked the applicant to extend the stockade fence to help block those lights. Mr. Gleason said that if the subdivision is approved, he would like a stipulation that the pump house be removed and replaced with another spruce tree. He said that the purpose of the conservation easement is buffering and screening and there needs to be an amendment to the easement to have all homeowners to enforce that conservation easement. He believed that the grading on Lot 2 will raise the headlights and that a 6 foot high stockade fence will not be high enough to block them totally. Some larger trees may also be necessary. Mr. Gleason said that it is important to demarcate the conservation easement areas and this should be a three lot subdivision not a four lot subdivision. He believes that the layout of Lot 1 and Lot 2 is "crazy". He believed that the Commission could eliminate Lot 2 and move the road further to the south to save the beech trees.

Being that it was 11:45 P.M., Mr. Damanti and the Commission unanimously agreed on a 10 minute recess until 11:55 P.M.

At 11:55 P.M., Attorney Wilder Gleason then submitted a draft easement document. Mr. John Orem of 43 Noroton Avenue then said that in his opinion, the safety issue is paramount. The Traffic Report submitted by the applicant references sight lines of 500 feet 10 feet off the street. He said that maybe that is a spot that has that but there are many, many blind spots. He said that Noroton Avenue is a very busy street with many trucks and buses. He said that he will contact the Police Department because he cannot fathom that they do not see safety issues and concerns regarding this subdivision. Ms. Margaret Bigelow of Clock Avenue then said that the applicant should not move the street further to the south because then her house would be sandwiched between two streets, Clock Avenue and the end of the cul-de-sac on the proposed street. They would be the only house so situated on Clock Avenue.

Attorney Arthur Engle then summarized the application. He said that they have tried to work with the neighbors but the neighbors have differing opinions which could not be satisfactorily resolved. They have added about \$15,000.00 worth of landscaping to address the neighbors' concerns. Relative to the issue of headlights, Mr. Engle noted that the subject property is lower than the Rice property on Clock Avenue. Mr. Rucci added that they are eligible to have a subdivision or re-subdivision and that the old subdivision for this property expired due to a lack of implementation. Mr. Spain then asked if there is any prohibition against the division of this lot relative to the existing

PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
SEPTEMBER 13, 2005
PAGE 7.

merger of two lots. Mr. Rucci said it is very clear that the old subdivision has expired and that this property is certainly eligible to be subdivided again. Mr. Engle added that under Article VII of the Darien Subdivision Regulations, the Planning and Zoning Commission has the authority to waive or not waive any separation requirements for roads. He specifically referred to Assessor's Map 6 showing five different streets intersecting with Mansfield Avenue very close to each other. Mr. Don Ferlow of Stearns and Wheler then said they are taking great care on the treatment of the east side landscaping which is now heavily shaded. He said that there are certainly alternatives with either a fence with vines; or move the fence in and plant shrubs on the east side of the fence; or remove many existing major trees to plant 8 foot tall pines and spruces.

There being no further questions or comments from Commission members or the general public, Mr. Spain made a motion to close the public hearing on this matter. That motion was seconded by Mr. Kenny and unanimously approved.

Due to the late hour, Mr. Bigelow did not return to the meeting.

GENERAL MEETING

At 12:15 A.M., Mr. Damanti read the next agenda item:

Flood Damage Prevention Application #229, Don Brooks, 56 Blueberry Lane. Proposing to install a swimming pool with associated terrace, pool fence and pool equipment, and to perform related site development activities within a regulated area. The subject property is located on the east side of Blueberry Lane, approximately 400 feet south of its northwestern intersection with Ox Ridge Lane, and is shown on Assessor's Map #7 as Lot #40 in the R-2 Zone.

Mr. Ginsberg noted that he and Mr. Keating found the "sign-offs" from the Harringtons. He said that all other certifications and paperwork seems to be in order, and if the Commission wishes, they can administratively approve the subject application. Mr. Conze made a motion to approve the application. That motion was seconded by Ms. Forman and unanimously approved.

Mr. Damanti confirmed that due to the late hour, the next item would not be addressed this evening:

Discussion, deliberation and possible decision on the following item:

Business Site Plan #172-D, Commerce Bank, 25-35 Boston Post Road. Proposing to raze the existing buildings on the property and to construct a one-story bank building with associated parking area and perform related site development activities.

There being no other business, the meeting was adjourned at 12:20 A.M.

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director